

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
NORTHERN DIVISION**

<hr/>		:	
WARREN TRUCK AND TRAILER, INC., on	:	CLASS ACTION COMPLAINT	
its own and on behalf of others similarly	:		
situated,	:		
	:		
Plaintiff,	:	Civil Action No.: _____	
v.	:		
	:		
LIFETIME KIA, PARKWAY AUTOMOTIVE	:		
GROUP, INC., and BLUERIDGE	:	Jury Trial Demanded	
AUTOMOTIVE GROUP, INC.	:		
	:		
Defendants.	:		
<hr/>			

The Plaintiff Warren Truck and Trailer, Inc., (“Plaintiff” or “Warren”) by and through counsel, brings this class action against Defendants Lifetime Kia, Parkway Automotive Group, Inc., and Blue Ridge Automotive Group, Inc. (“Defendants”) pursuant to Rule 23 of the Federal Rules of Civil Procedure. Warren brings this class action on its own behalf and on behalf of all other persons and entities who meet the class definition below (the “Class”). Pursuant to 47 U.S.C. §227(b)(3), Warren and Class Members are entitled to, inter alia, statutory damages and injunctive relief for Defendants’ actions.

PARTIES, JURISDICTION, AND VENUE

1. The Plaintiff Warren Truck and Trailer, Inc. is an Alabama Corporation with its principal place of business located in Jefferson County, Alabama. It is therefore a citizen of Alabama.

2. Warren is informed and believes, and based thereon alleges, that Defendant Lifetime Kia is a business with its principal place of business in Murphy, North Carolina. It is

therefore a citizen of North Carolina. Lifetime Kia has sent, or caused to be sent, unsolicited facsimile advertisements to Warren and members of the Class in violation of the TCPA and common law.

3. Warren is informed and believes, and based thereon alleges, that Defendant Parkway Automotive Group, Inc. is a corporation formed under the laws of Tennessee with its principal place of business located at 300 King Avenue, Morristown, Tennessee 37814. It is therefore a citizen of Tennessee. Parkway Automotive Group, Inc. has sent, or caused to be sent, unsolicited facsimile advertisements to Warren and members of the Class in violation of the TCPA and common law.

4. Warren is informed and believes, and based thereon alleges, that Defendant Blue Ridge Automotive Group, Inc. is a corporation formed under the laws of North Carolina with its principal place of business located at 4170 US Highway 64 West Murphy, NC 28906. It is therefore a citizen of North Carolina. Blue Ridge Automotive Group, Inc. has sent, or caused to be sent, unsolicited facsimile advertisements to Warren and members of the Class in violation of the TCPA and common law.

5. Warren is informed and believes, and based thereon alleges, that Defendant Parkway Automotive Group, Inc. and Defendant Blue Ridge Automotive Group, Inc. own, control, and operate Defendant Lifetime Kia's outgoing fax number, telephone system, advertising, website, and domain name.

6. Warren is informed and believes, and based thereon alleges, that all of the acts and omissions alleged herein were performed by, or are attributable to Lifetime Kia, Parkway Automotive Group, Inc., and Blue Ridge Automotive Group, Inc.

7. The use of “Defendants” in the following averments herein shall include all defendants.

8. The Court has federal question jurisdiction over this class action under 28 U.S.C. § 1331 and 47 U.S.C. § 227.

9. This court also has subject-matter jurisdiction in this nationwide class action under 28 U.S.C. § 1332(d) because upon information and belief, the matter in controversy concerning the TCPA exceeds the sum or value of \$5,000,000, exclusive of interest and costs, involves thousands of class members and is a class action in which at least one member of the class is a citizen of a state different from at least one of the Defendants.

10. This court has personal jurisdiction over Defendants because they do business in the State of Alabama, have sufficient minimum contacts with the State of Alabama, and otherwise avail themselves of the markets in Alabama through their marketing and sale of goods and services in Alabama and their advertisements (by way of unsolicited facsimile advertisements) sent directly to Alabama thereby rendering exercise of jurisdiction by this court permissible under traditional notions of fair play and substantial justice.

11. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(a)(2), 1391(b)(2) because this is the judicial district in which a substantial part of the events or omissions giving rise to the claims in this case occurred.

NATURE OF THE ACTION

12. Warren brings this class action on behalf of nationwide consumers seeking redress for Defendants’ actions which violate the Telephone Consumer Protection Act, 47 U.S.C. §227 (hereinafter “TCPA”).

13. Congress enacted the TCPA because it believed that unsolicited fax advertisements improperly shift advertising costs to the unwilling fax recipients and interfere with the use of fax machines by these recipients, who are consumers and businesses. Specifically, Congress found that “this type of telemarketing is problematic for two reasons. First, it shifts some of the costs of advertising from the sender to the recipient. Second, it occupies the recipient's facsimile machine so that it is unavailable for legitimate business messages while processing and printing the junk fax.” H.R. Rep. 102-317 at 10 (1991).

14. Furthermore, the regulations under the TCPA prohibit the sending of fax advertisements that do not contain the proper opt-out notice.

15. The 2006 Federal Communications Commission (“FCC”) Report and Order In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act, Junk Prevention Act of 2005, 21 F.C.C.R. 3787, 2006 WL 901720 (the “2006 Report and Order”) stated that the failure of a sender to comply with the opt-out notice requirements precludes the senders from claiming that a recipient gave “prior express permission or invitation” to receive the sender’s fax. (*Id.* at ¶48.)

16. Upon information and belief, the Defendants have recently sent out thousands of unsolicited fax advertisements and thousands of fax advertisements without the proper opt-out notices required by the TCPA.

17. Warren is seeking damages, declaratory relief, and injunctive relief.

GENERAL ALLEGATIONS

18. On or about January 24, 2018, at approximately 10:24 a.m., Warren received an unsolicited facsimile to its facsimile machine within Alabama and within this District. The

unsolicited facsimile was sent by Defendants to Warren which required Warren to expend time, money, and expense to receive, retrieve, and review the unsolicited facsimile.

19. The facsimile is an advertisement of Defendants' used vehicle inventory for sale. The facsimile is attached hereto as **Exhibit 1** and was unsolicited.

20. Warren has never given any written authorization to anyone expressly permitting Defendants – or anyone acting on Defendants' behalf – to use Warren's facsimile number for advertising purposes. Furthermore, Warren has never purchased a vehicle from or visited Lifetime Kia.

21. The facsimile that Warren received was sent for the purpose of advertisement to encourage the purchase of goods or services. The purpose of the facsimile received by Warren was to advertise or encourage the purchase of used vehicles from the Defendants.

22. Defendants' facsimile encourages readers to "Register...to gain access to thousands of units!" and then provides a website address to do so. Warren never registered for such information. Indeed, prior to receiving the above alleged facsimile, Warren had never heard of Defendants nor visited their websites. Warren certainly did not have an establish business relationship as defined within the terms of the TCPA. 47 U.S.C. §227(a)(2).

23. Thus, Defendants, without Warren's express invitation or permission, arranged for and/or caused a telephone facsimile machine, computer, or other device to send unsolicited fax advertisements (hereinafter "the fax advertisements"), advertising the commercial availability or quality of any property, goods, or services, to Warren's fax machine located in Birmingham, Alabama.

24. The unsolicited facsimile, Exhibit 1, also fails to contain an adequate opt-out notice in violation of 47 U.S.C. §227(b)(2)(D)(ii) & (iii) & (iv)(I) & (v).

25. Upon information and belief, Defendants either negligently, willfully and/or knowingly arranged for and/or caused the fax advertisements to be sent to Warren's fax machine.

26. Upon information and belief, Defendants have previously, from four years prior to the date of the filing of this Complaint through the present, either negligently, willfully and/or knowingly sent and/or arranged to be sent thousands of unsolicited fax advertisements, advertising the commercial availability or quality of any property, goods, or services, to fax machines and/or computers nationwide.

27. Upon information and belief, the facsimile advertisements described in the preceding paragraph failed to contain a proper opt out notice, substantially similar or identical to the fax advertisements sent to Warren that are attached hereto as Exhibit 1.

CLASS ACTION ALLEGATIONS

28. Warren is informed and believes, and based thereon alleges, that Defendants never obtained prior express invitation or permission from any consumers expressly authorizing advertising facsimiles and that it failed to provide the appropriate opt-out notice and procedures.

29. Warren defines the Classes as follows:

- a. No Consent Class: All persons in the United States who received any fax advertisement on their telephone facsimile machines from any Defendant or their agents(s) and/or employee(s) within the four years prior to the filing of the Complaint through class notice, where Defendants' records do not reflect that such fax advertisement was solicited.
- b. Improper Opt-Out Notice Class: All persons in the United States who received any fax advertisement on their telephone facsimile machines from any Defendant or their agent(s) and/or employee(s) within the four years prior to the filing of the Complaint through class notice where (1) said advertisements failed to properly notify the recipient of their ability to opt-out of receiving such fax advertisements

from Defendants in the future, and where (2) Defendants' records do not reflect that such fax advertisement was solicited.

30. Defendants and their employees or agents are excluded from the Classes.

31. Warren reserves the right to amend or modify the proposed Classes, or to propose additional subclasses or limitations to particular issues, in response to facts later ascertained.

32. **Numerosity.** The identities of Class Members may be ascertained from Defendants' own business and marketing records. Joinder of all Class Members would be impracticable due to the sizeable number of such Members and their likely lack of resources to initiate individual claims. Warren estimates that thousands of facsimiles were placed to well-over one hundred individuals, given that Warren received the advertisement in Alabama for a North Carolina car dealership. Also, as explained below, the amount that is owed to any given Class Member under the TCPA is relatively small, making it impractical for them to bring their own individual suits.

33. **Commonality.** There are questions of law and fact that are common to the Classes and that predominate over any questions affecting only individual Class Members. These common questions include, without limitation:

- a) Whether the Defendants engaged in a pattern of sending unsolicited facsimile advertisements;
- b) The manner in which the Defendants compiled or obtained its list of facsimile numbers;
- c) Whether the facsimiles sent by Defendants are material advertising the commercial availability of any property, goods, or services;
- d) Whether the facsimiles violated the TCPA;
- e) Whether Defendants continued to send facsimiles to class members with a prior established business relationship after receiving a request not to send future unsolicited advertisements;
- f) Whether Warren and the Class members were damaged thereby, and the extent of

damages for such violation; and

- g) Whether Defendants and their agents should be enjoined from engaging in such conduct in the future.

34. **Typicality.** Warren's claims are typical of those of the Classes because it received at least one unsolicited facsimile to its telephone facsimile machine from Defendants advertising or promoting Defendants' goods or services and because it never provided prior express consent to receive any such facsimiles. Furthermore, its claims are typical of those of the Classes because Defendants failed to properly provide the opt-out notice they were required to do.

35. **Adequacy.** Warren will fairly and adequately represent and protect the interests of the Class. It is not aware of any conflicts that it has with Class Members, and it plans on pursuing the litigation vigorously. Warren also has the same interests as those of the Class, and it has retained counsel who are competent and experienced in class-action litigation. In addition, it has been actively involved in the litigation, it will continue to participate and be available for the duration of the litigation, and it understands the duties that it holds to the Class.

36. **Superiority.** A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Again, the individual joinder of all Class Members is impracticable because of the relatively small recovery amounts at stake and the relative lack of resources available for individual Class Members vis-à-vis the large corporate Defendants. Additionally, the judicial system would be burdened with multiple trials of the same issues, and the potential for inconsistent or contradictory judgments would increase. The common questions detailed above, in fact, predominate in this action, as Class Members' claims arise out of the same course of conduct to which Warren itself was subject. A class action therefore would conserve the resources of the parties and the Court while protecting the rights of Class Members. Defendants' conduct as described above is unlawful, continuing, capable of repetition, and will continue unless restrained and enjoined by the Court. Moreover, it is a matter of public interest to obtain definitive answers to the legality of Defendants' actions in a single case.

37. Warren and members of the Classes were harmed by the acts of Defendants in at

least the following ways: Defendants, either directly or through their agents, illegally contacted Warren and the Class members via their telephone facsimile machines by either: 1) sending unsolicited fax advertisements; or 2) sending fax advertisements which failed to properly inform Warren and the class members of their ability to opt-out of receiving such fax advertisements from Defendant in the future. Warren and the Class Members were damaged thereby.

38. Defendants' acts caused Warren and the Class Members the very harm that the TCPA was enacted to prevent, by occupying the recipient's telephone line and fax machine during the time that the fax was being sent and stored, wasting the paper and ink caused by the printing of the offending fax, wasting the time of the recipients in reading, deleting and otherwise administering these unwanted faxes, and by failing to provide the recipient with the information required by the statute.

39. Warren and the members of the Classes have all suffered irreparable harm as a result of the Defendants' unlawful and wrongful conduct. Absent a class action, the Classes will continue to face the potential for irreparable harm. In addition, these violations of law will be allowed to proceed without remedy and Defendants will likely continue such illegal conduct.

FIRST CLAIM FOR RELIEF

(Violation of the Telephone Consumer Protection Act, 47 U.S.C. §227)

40. Warren hereby adopts and incorporates by reference all of the above allegations.

41. At all times relevant to this Complaint, 47 U.S.C. §227 was in full force and effect and Warren and the Class Members are entitled to the protections and benefits therein. The TCPA, 47 U.S.C. §227(b)(1)(C) makes unlawful the "use of any telephone facsimile machine computer or other device to send an unsolicited advertisement to a telephone facsimile machine..." The term "unsolicited advertisement" means "any material advertising the commercial availability or quality of any property, goods or services which is transmitted to any person without that person's prior express invitation or permission, in writing or otherwise." 47 U.S.C. §227(a)(4).

42. The foregoing acts and omissions of Defendants constitute a direct violation of the TCPA.

43. The failure of the Defendants to comply with the opt-out notice requirements spelled out in 47 U.S.C. § 227(b)(2)(D), precludes the Defendants from claiming that a recipient gave “prior express permission or invitation” to receive the sender’s fax.

44. The TCPA establishes a private right of action for sending unsolicited facsimiles to consumers:

A person or entity may, if otherwise permitted by the laws or rules of court of a State, bring in an appropriate court of that State (A) an action based on a violation of this subsection or the regulations prescribed under this subsection to enjoin such violation, (B) an action to recover for actual monetary loss from such a violation, or to receive \$500 in damages for each such violation, whichever is greater, or (C) both such actions. If the court finds that the defendant willfully or knowingly violated this subsection or the regulations prescribed under this subsection, the court may, in its discretion, increase the amount of the award to an amount equal to not more than 3 times the amount available under subparagraph (B) of this paragraph.

47 U.S.C. § 227(b)(3).

45. Warren and members of the Class are entitled to injunctive relief and statutory damages and, if the evidence shows the violation was willful, Warren requests trebling of the damages.

PRAYER FOR RELIEF

WHEREFORE, Warren prays for judgment as follows:

1. An order certifying the Classes under Rule 23 of the Federal Rules of Civil Procedure;

2. On the First Claim for Relief, as a result of Defendants’ negligent violations of 47 U.S.C. § 227(b)(2)(D), Warren and each member of the Classes is entitled to and requests the greater of actual damages or five hundred dollars (\$500.00) in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B); and

3. On the First Claim for Relief, as a result of Defendants' willful and/or knowing violations of 47 U.S.C. § 227(b)(2)(D), Warren and each member of the Class is entitled to and requests the greater of actual damages or treble damages, as provided by statute, up to one thousand five hundred dollars (\$1,500.00), for each and every violation pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C); and;

4. An Order, pursuant to 47 U.S.C. § 227(b)(3)(A), enjoining Defendant from violating 47 U.S.C. § 227(b)(2)(D); and

5. An award of attorney's fees and costs of suit, to the extent allowable by law; and

6. For such other and further relief as the Court may deem just and proper.

Dated: 3/22/2018

Respectfully submitted,

/s/ Taylor C. Bartlett

Taylor C. Bartlett (ASB A51B-2365)
W. Lewis Garrison, Jr. (ASB N74W-3591)
Anna M. Carroll (ASB 3029-Y40N)
HENINGER GARRISON DAVIS, LLC
2224 First Avenue North
Birmingham, Alabama 35203
Phone: 205.326.3336
lewis@hgdllawfirm.com
taylor@hgdllawfirm.com
acarroll@hgdllawfirm.com

DEMAND FOR JURY TRIAL

Plaintiff requests a trial by jury as to all claims for relief.

Dated: 3/22/2018

Respectfully submitted,

/s/ Taylor C. Bartlett

Taylor C. Bartlett (ASB A51B-2365)

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Three Auto Dealers Facing Class Action Over Alleged Junk Faxes](#)
